FILED: December 20, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-2157
(3:17-cv-00260-REP)

AARON HAAS; LENA HAAS

Plaintiffs - Appellants

v.

CITY OF RICHMOND; SELENA CUFFE-GLENN; TIMOTHY A. BURNETT; DAVID COOPER; WILLIAM DAVIDSON; AARON GRAYSON; BYRON MARSHALL; RANDELL MASTERS; ALICE SNELL; MARK WIGGINS; ANY UNKNOWN GOVERNMENT AGENTS, That is Involved in Causes of Action for 6001/6007 Hull Street Road Against the Plaintiff; JEREMY L. NEIRMAN

Defendants - Appellees

and

COMMONWEALTH OF VIRGINIA; DON ANDREWS; ANTHONY HARRIS; ANTHONY JONES; GREGORY LUKANUSKI; THEODORE J. MARKOW; ADEL EDWARD; CHRISTOPHER BESCHLER; WILLIAM E. BINGHAM; JOSEPH B. CALL, III; EARL DRYER, JR.; RASHAD L. GRESHAM; JOHN DOE, Supervisor of Officer Snell, Alice R.P.D.; ROBERT JOHNSON; M.S. KARA; JACKI PAGE; AURETHA PHELPS; PAMELA PORTER; MARVIN TART; ANDREW WASUIK

Defendants

JUDGMENT

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-2157

AARON HAAS; LENA HAAS,

Plaintiffs - Appellants,

v.

CITY OF RICHMOND; SELENA CUFFE-GLENN; TIMOTHY A. BURNETT; DAVID COOPER; WILLIAM DAVIDSON; AARON GRAYSON; BYRON MARSHALL; RANDELL MASTERS; ALICE SNELL; MARK WIGGINS; ANY UNKNOWN GOVERNMENT AGENTS, That is Involved in Causes of Action for 6001/6007 Hull Street Road Against the Plaintiff; JEREMY L. NEIRMAN,

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and

COMMONWEALTH OF VIRGINIA; DON ANDREWS; ANTHONY HARRIS; ANTHONY JONES; GREGORY LUKANUSKI; THEODORE J. MARKOW; ADEL EDWARD; CHRISTOPHER BESCHLER; WILLIAM E. BINGHAM; JOSEPH B. CALL, III; EARL DRYER, JR.; RASHAD L. GRESHAM; JOHN DOE, Supervisor of Officer Snell, Alice R.P.D.; ROBERT JOHNSON; M.S. KARA; JACKI PAGE; AURETHA PHELPS; PAMELA PORTER; MARVIN TART; ANDREW WASUIK,

Defendants.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. Robert E. Payne, Senior District Judge. (3:17-cv-00260-REP)

Submitted: December 18, 2018 Decided: December 20, 2018

Before AGEE, THACKER, and HARRIS, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Aaron and Lena Haas, Appellants Pro Se. Richard Earl Hill, Jr., CITY ATTORNEY'S OFFICE, Richmond, Virginia, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Aaron and Lena Haas appeal the district court's order dismissing their second amended complaint against certain Defendants and denying leave to file a third amended complaint and the order dismissing without prejudice their claims against the remaining Defendants for failure to serve.* We have reviewed the record and find no reversible error in the first dismissal order, which we affirm for the reasons stated by the district court. *Haas v. City of Richmond*, No. 3:17-cv-00260-REP (E.D. Va. Aug. 10, 2018). But the Haases have forfeited appellate review of the second dismissal order by failing to challenge the basis for the district court's disposition in their informal brief. *See* 4th Cir. R. 34(b); *Jackson*, 775 F.3d at 177 ("The informal brief is an important document; under Fourth Circuit rules, our review is limited to issues preserved in that brief."). Accordingly, we affirm the district court's judgment. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

* Although the Haases did not technically comply with Fed. R. App. P. 3(c)(1)(B) when composing their timely notice of appeal, we conclude that we have jurisdiction to review both orders. *See Jackson v. Lightsey*, 775 F.3d 170, 176 (4th Cir. 2014) ("[W]e construe the rule liberally and take a functional approach to compliance, asking whether the putative appellant has manifested the intent to appeal a specific judgment or order and whether the affected party had notice and an opportunity fully to brief the issue.").

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

Aaron Haas, et al.,

Plaintiffs,

v. Civil Action No. 3:17-cv-260

City of Richmond, et al.,

Defendants.

MEMORANDUM ORDER

This matter is before the Court on Plaintiffs' OBJECTION TO ORDER (ECR [sic] No. 51) (ECF No. 52). The Court construes Plaintiffs' filing as a motion to reconsider pursuant to Fed. R. Civ. P. 54(b). For the following reasons, the motion is denied.

BACKGROUND

On August 10, 2018, the Court by ORDER (ECF No. 51) granted the motions to dismiss of several Defendants and refused to allow Plaintiffs leave to amend. The Court set out its reasoning in an accompanying Memorandum Opinion (ECF No. 50). See generally Haas v. City of Richmond, 3:17-cv-260, 2018 WL 3826776 (E.D. Va. Aug. 10, 2018). The Court incorporates that Opinion herein by reference and assumes familiarity with it.

On August 24, 2018, Plaintiffs filed an OBJECTION TO ORDER (ECR [sic] No. 51) (ECF No. 52). Therein, they raise four arguments against the Court's ORDER (ECF No. 51) and Memorandum Opinion (ECF No. 50).

First, Plaintiffs contend that:

> When the court was analyzing weather to grant an amendment for the Plaintiffs. [sic] The court respectfully failed to consider any document that could be relied upon in the complaint. The issue is not whether a plaintiff will ultimately prevail, but whether the claimant is entitled to offer evidence to support the claims." Scheuer v. Rhodes, 416 U.S. 232, 236, 94 S.Ct. 1683, 1686, 40 L.Ed.2d 90 (1974). The court is not limited to the four corners of the complaint. The court may consider all complaints and amendments provided by the Plaintiffs to analyze granting another amendment to the Plaintiffs. The court did not do this. The Plaintiffs have provided sets of facts and evidence in the original complaint and first amendment (ECF No. 1 and ECF No. 7) to plausibly support a claim.

Pls.' Obj. *1.

Second, they assert:

> There are always two side [sic] to a story and to ask the court to look at the Plaintiff's [sic] argument as they do not believe they acted out of bad faith. The Plaintiffs' [sic] solely took heed to [sic] the advise [sic] of the Court's view on their Complaint that it was not understandable and need [sic] to be shortened and [sic] to "a short statement of the claims showing that the Plaintiff is entitled to relief". The Plaintiff responded to the court and provided two amended complaints (EFC [sic] No. 7 And EFC [sic] No. 20) the [sic] first amended complaint (EFC [sic] No. 7) the Plaintiffs believed was still not a short and simple statement as the court requested and so the Plaintiffs submitted another amendment (EFC [sic] No. 20) to the court pursuant to Federal Rules 15 (a) 1 (A) for good cause on what the court had ordered and can reference to the note to the judge of why they were submitting the second amendment to remove and add a couple of

> defendants and simplify the case, see (EFC [sic] No. 20, page 2). The Plaintiffs [sic] view is the second amendment (EFC [sic] No 20) fulfilled the short statement and clarified what the Plaintiffs were trying to claim as the court advised and/or ordered to do. The purpose of the Plaintiffs requesting another amendment is to merge the simple statement and understanding of the claim (EFC [sic] No. 20) with the original complaint (EFC [sic] No. 1) which had the actual facts needed to state the claim which was provided to the court.

Pls.' Obj. *2.

Third, Plaintiffs maintain that further amendment would not have been prejudicial because dismissal was improper under Fed. R. Civ. P. 12(b)(6). See Pls.' Obj. *2-3.

And, fourth, Plaintiffs argue that, in other cases, plaintiffs were permitted three amendments. Pls.' Obj. *3.

DISCUSSION

The Court construes Plaintiffs' "objection" to be a motion for reconsideration under Fed. R. Civ. P. 54(b). As the Fourth Circuit recently has held:

> Under Rule 54(b), "a district court retains the power to reconsider and modify its interlocutory judgments . . . at any time prior to final judgment when such is warranted." "Compared to motions to reconsider final judgments pursuant to Rule 59(e) of the Federal Rules of Civil Procedure, Rule 54(b)'s approach involves broader flexibility to revise interlocutory orders before final judgment as the litigation develops and new facts or arguments come to light."

> Nevertheless, the discretion afforded by Rule 54(b) "is not limitless," and we "have cabined revision pursuant to Rule 54(b) by treating interlocutory rulings as law of the case." This is because, while Rule 54(b) "gives a district court discretion to revisit earlier rulings in the same case," such discretion is "subject to the caveat that where litigants have once battled for the court's decision, they should neither be required, nor without good reason permitted, to battle for it again."
>
> Accordingly, "a court may revise an interlocutory order under the same circumstances in which it may depart from the law of the case: '(1) a subsequent trial producing substantially different evidence; (2) a change in applicable law; or (3) clear error causing manifest injustice.'"

United States Tobacco Coop. Inc. v. Big S. Wholesale of Va., LLC, __F.3d__, 2018 WL 3677555, at *14 (4th Cir. Aug. 3, 2018) (citations omitted). This Court, moreover, has explained that motions to reconsider under Fed. R. Civ. P. 54(b) should be granted only in the rare case:

> Motions for reconsideration are not lightly granted, and "the Court exercises its discretion to consider such motions sparingly." This Court has characterized such motions as an "extraordinary remedy." Indeed, the type of concerns that would warrant reconsideration "rarely arise and the motion to reconsider should be equally rare."
>
> Consequently, there are substantial limitations on the use of motions for reconsideration. For instance, "[a] party's mere disagreement with the district court's ruling does not warrant a motion for reconsideration." Likewise, "[c]ourts do not entertain motions to reconsider which ask the

> Court to 'rethink what the Court had already thought through-rightly or wrongly.'" "Moreover, 'the court should not reevaluate the basis upon which it made a prior ruling, if the moving party merely seeks to reargue a previous claim.'" Finally, "such motions should not be used 'to raise arguments which could have been raised prior to the issuance of the judgment, nor may they be used to argue a case under a novel legal theory that the party had the ability to address in the first instance.'"

Benedict v. Hankook Tire Co. Ltd., 3:17-cv-109, 2018 WL 1655358, at *3 (E.D. Va. Apr. 5, 2018) (citations omitted).

Here, nothing in Plaintiffs' objection convinces the Court that reconsideration is warranted. As an initial matter, no argument therein suggests that there has been "(1) a subsequent trial producing substantially different evidence; [or] (2) a change in applicable law." See Pls.' Obj. *1-3; United States Tobacco Coop. Inc., 2018 WL 3677555, at *14 (citations omitted). Thus, we must determine whether there has been "clear error causing manifest injustice." See United States Tobacco Coop. Inc., 2018 WL 3677555, at *14 (citations omitted). To qualify for reconsideration on that ground, the Court's previous decision: "must strike [the Court] as wrong with the force of a five-week-old, unrefrigerated dead fish. It must be dead wrong." See id. at *15 (citations omitted).

Plaintiffs' first argument fails to support reconsideration. Contrary to that argument, the Court based its decision to deny leave to amend upon a thorough review of the record, party filings, and

case history, which would be apparent from even a cursory reading of the Court's Memorandum Opinion. See Pls.' Obj. *1; Haas, 2018 WL 3826776, at *4-6. Plaintiffs' argument has no basis in reality and, moreover, reflects "mere disagreement with the district court's ruling." See Benedict, 2018 WL 1655358, at *3 (citations omitted).[1]

Plaintiffs' second argument also does not support reconsideration. See Pls.' Obj. *2. The Court clearly explained, in its previous Opinion, why Plaintiffs' Second Amended Complaint was deficient and why their repeated failure to produce a complaint that satisfied federal pleading requirements (and related circumstances) rendered further amendment inappropriate. See Haas, 2018 WL 3826776, at *1-6, 6 n.7. Plaintiffs' argument does not convince the Court to alter those conclusions or suggest anything amounting to "clear error causing manifest injustice." See Pls.' Obj. *2; United States Tobacco Coop. Inc., 2018 WL 3677555, at *14 (citations omitted). And, it largely reflects Plaintiffs' "mere disagreement with the district court's ruling" and/or "ask[s] the Court to 'rethink what the Court had already thought through.'" See Pls.' Obj. *2; Benedict, 2018 WL 1655358, at *3 (citations omitted).

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[1] Additionally, the only way in which the Court's decision was based upon a determination of whether Plaintiffs could "ultimately prevail" was the Court's conclusion that Plaintiffs' repeated pleading failures were "suggestive of bad faith and futility." See Pls.' Obj. *1; Haas, 2018 WL 3826776, at *6 n.7. That is a permissible inference to draw in deciding whether to grant leave to amend. See Haas, 2018 WL 3826776, at *3 n.2, 6 n.7.

Plaintiffs' third argument fails for three reasons. First, it conflates the issue of whether a Fed. R. Civ. P. 12(b)(6) motion should be granted with the issue of whether leave to amend should be allowed. See Pls.' Obj. *2-3. Second, the standards it proffers and sources it cites related to the Fed. R. Civ. P. 12(b)(6) standard are all from before the Supreme Court's reformulation of that standard in Ashcroft v. Iqbal, 556 U.S. 662 (2009), and Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007). See Pls.' Obj. *2-3. Third, dismissal under Fed. R. Civ. P. 12(b)(6) was entirely proper under the correct standard. See Haas, 2018 WL 3826776, at *2.

Plaintiffs' fourth argument likewise fails. The Court considered the number of previous amendments, among other things, in concluding that a further opportunity to amend should be denied. See Haas, 2018 WL 3826776, at *4-5. "[C]ourts do not entertain motions to reconsider which ask the Court to 'rethink what the Court had already thought through-rightly or wrongly.'" See Benedict, 2018 WL 1655358, at *3 (citations omitted). And, the denial of leave to amend is a discretionary decision based on the "particular circumstances" at issue, not on the specific number of previous amendments. See Abdul-Mumit v. Alexandria Hyundai, LLC, 896 F.3d 278, 293 (4th Cir. 2018).

In sum, there is no basis for reconsideration on any ground. Plaintiffs' motion, as construed, is denied.

CONCLUSION

For the foregoing reasons, Plaintiffs' OBJECTION TO ORDER (ECR [sic] No. 51) (ECF No. 52), construed as a motion for reconsideration under Fed. R. Civ. P. 54(b), is denied.

The Clerk is directed to send a copy of this ORDER to Plaintiffs.

It is so ORDERED.

/s/ REP
Robert E. Payne
Senior United States District Judge

Richmond, Virginia
Date: August 27, 2018

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

Aaron Haas, et al.,

Plaintiffs,

v. Civil Action No. 3:17-cv-260

City of Richmond, et al.,

Defendants.

MEMORANDUM OPINION

This matter is before the Court on Defendants the City of Richmond, Selena Cuffee-Glenn, Timothy Burnett, William Davidson, and Randall Masters' MOTION TO DISMISS THE SECOND AMENDED COMPLAINT PURSUANT TO RULE 12(b)(6) (ECF No. 24); Defendants Jeremy L. Nierman and Alice Snell's MOTION TO DISMISS THE SECOND AMENDED COMPLAINT PURSUANT TO RULE 12(b)(6) (ECF No. 36); Defendant Aaron Grayson's MOTION TO DISMISS THE SECOND AMENDED COMPLAINT PURSUANT TO RULE 12(b)(6) (ECF No. 41); PLAINTIFFS' MOTION FOR LEAVE TO FILE AMENDED COMPLAINT (ECF No. 27); and Plaintiffs' MOTION TO LEAVE TO AMEND TO ALL DEFENDANTS/ DISMISS THE PRIOR MOTION TO LEAVE TO AMEND (ECF No. 48). For the following reasons, Defendants' motions to dismiss (ECF Nos. 24, 36, 41) will be granted; PLAINTIFFS' MOTION FOR LEAVE TO FILE AMENDED COMPLAINT (ECF No. 27) will be denied as moot; and Plaintiffs' MOTION TO LEAVE TO AMEND TO ALL DEFENDANTS/ DISMISS THE PRIOR MOTION TO LEAVE TO AMEND (ECF No. 48) will be granted in part and denied in part.

BACKGROUND

I. Procedural Context

Plaintiffs Aaron and Lena Haas, proceeding pro se, sue Defendants on a variety of grounds under 42 U.S.C. §§ 1983 and 1985 (and perhaps other provisions of law).

Plaintiffs filed their Complaint (ECF No. 1) on April 4, 2017. On April 20, 2017, Plaintiffs moved to amend the Complaint (and a corrected version of the motion was filed on April 28, 2017). On May 18, 2017, the Court signed an ORDER (ECF No. 6), which advised that the Complaint and proposed amendments were inadequate and required Plaintiffs to replead their claims. Plaintiffs filed an Amended Complaint (ECF No. 7) on June 19, 2017, and several Defendants moved to dismiss the Amended Complaint on November 28, 2017. On November 29, 2017, Plaintiffs filed a Second Amended Complaint (ECF No. 20) pursuant to Fed. R. Civ. P. 15(a)(1), and the Court by ORDER (ECF No. 23) dated December 11, 2017 denied as moot the motion to dismiss.

Several Defendants thereafter filed motions to dismiss the Second Amended Complaint. After the first of these motions was filed, Plaintiffs moved for leave to file a Third Amended Complaint. Plaintiffs later filed a second motion for leave to amend. In that second motion, Plaintiffs requested that the previous motion to amend be dismissed.

II. Relevant Factual Allegations in the Second Amended Complaint

Plaintiffs' Second Amended Complaint lists several dates on which various Defendants engaged in unspecified improper conduct. Second Am. Compl. 8. Davidson did something on June 11, 2007; Burnett, Wiggins, and Davidson did something on November 24 (year unspecified); Burnett and Nierman did something on January 4, 2011; Burnett and Wiggins did something on January 5, 2011; Burnett and Grayson did something on September 2, 2011; Burnett and Cooper did something on December 8, 2011; Davidson did something on September 18, 2013; and Masters, Snell, and Davidson did something on January 28, 2018. Second Am. Compl. 8.

The Second Amended Complaint then proceeds to enumerate a series of wrongs in which the aforementioned Defendants were involved on the listed dates. Second Am. Compl. 8-9. These wrongs include: "violating the 4th amendment and initiating searches without probable cause"; "interfering with Mr. and Mrs. Haas [sic] rights and the defendants refusing to leave the private property and continue their searches"; "[h]arassing Mr. and/or Mrs. Haas"; "conspired (constructive and Actual) with other defendants to deprive constitutional rights under 18 USC §241"; "discriminating against Mr. and Mrs. Haas because they voiced their civil rights and because of property at 6001/6007"; "deprived constitutional rights under 18 USC 242"; "threatened"; "illegally seize property/unlawful

conversion of 6001/6007 Hull Street Road"; "violated the 5th amendment of the United States"; "violated of [sic] the right to privacy, the 9th amendment of the United states"; "violated of [sic] equal protection of the laws guaranteed by the 14th amendment of the United States"; and "violated civil rights." Second Am. Compl. 8-9.

Plaintiffs also allege that, from 2007 to 2017, "[t]he Chief Administrative Officers, Mr. Marshal and/or Ms. Cuffee-Glenn" were "directly responsible for the [City of Richmond's] day to day municipal operations and had a duty to protect civil rights, by having proper management, training, written formal policies and procedures in compliance with the city's authority, and compliance of [sic] all laws, including federal laws" but failed to protect Plaintiffs "by not having a [sic] clear written formal policies, procedures and proper management for the Planning Department and/or its units." Second Am. Compl. 9. They claim that "[t]he city audits during 2007-2017 had recommendation [sic] to establish written policies and without the policies or proper management, the 'city' and the defendants failed to catch the repeated customs" that caused the above-listed wrongful conduct. See Second Am. Compl. 10. According to Plaintiffs, the City of Richmond "failed to prevent and/ or redress customs of the department by the defendants" that caused the listed conduct, even after receiving complaints from Plaintiffs on February 29, 2012 and thereafter. See Second Am. Compl. 10.

DISCUSSION

I. The Fed. R. Civ. P. 12(b)(6) Motions

Defendants move to dismiss Plaintiffs' Second Amended Complaint pursuant to Fed. R. Civ. P. 12(b)(6). Defs.' Br. 1 (ECF No. 26); Defs.' Br. 1 (ECF No. 38); Def.'s Br. 1 (ECF No. 43). Defendants raise several arguments, but, importantly, they assert that the Second Amended Complaint lacks sufficient factual allegations to support a claim. Defs.' Br. 9 (ECF No. 26); Defs.' Br. 8 (ECF No. 38); Def.'s Br. 8 (ECF No. 43). The Court agrees.

A. The Standards Governing Fed. R. Civ. P. 12(b)(6) Motions

Fed. R. Civ. P. 12(b)(6) motions are evaluated under the following standards:

> "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, 'to state a claim to relief that is plausible on its face.'" We accept as true all well-pleaded facts in a complaint and construe them in the light most favorable to the plaintiff. As for pro se complaints, we "liberally construe" them.

Matherly v. Andrews, 859 F.3d 264, 274 (4th Cir. 2017) (citations omitted). Notwithstanding those basic principles, however:

> We do not . . . "accept as true a legal conclusion couched as a factual allegation." Nor do we accept "unwarranted inferences, unreasonable conclusions, or arguments." We can further put aside any "naked assertions devoid of further factual enhancement."

SD3, LLC v. Black & Decker (U.S.) Inc., 801 F.3d 412, 422 (4th Cir.

2015) (citations omitted).

B. Analysis

Here, Plaintiffs' Second Amended Complaint contains no factual allegations that could establish a plausible claim for relief. The alleged wrongs are described in a conclusory manner and constitute "naked assertions devoid of further factual enhancement." See SD3, 801 F.3d at 422 (citations omitted). Accordingly, Defendants' motions to dismiss will be granted.[1]

II. The Motions to Amend the Second Amended Complaint

Plaintiffs have moved, twice, to amend the Second Amended Complaint. Plaintiffs' request to amend shall be denied.

A. Withdrawal of the First Motion to Amend the Second Amended Complaint

As a threshold matter, the Court must resolve the issue of Plaintiffs' two motions to amend the Second Amended Complaint. As noted above, Plaintiffs moved to amend the Second Amended Complaint and then, thereafter, again moved to amend the Second Amended Complaint and to dismiss the first motion to amend. The Court will

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[1] Plaintiffs present additional allegations in their Oppositions to Defendants' motions to dismiss. See Pls.' Opp'n 4 (ECF No. 28); Pls.' Opp'n 2-23 (ECF No. 44). However, allegations that appear only in a brief are not considered on a motion to dismiss. See, e.g., Blaise v. Harris, 3:16-cv-23, 2016 WL 4265748, at *3 (E.D. Va. Aug. 11, 2016); Neal v. Patrick Henry Cmty. Coll., 4:15-cv-4, 2015 WL 5165278, at *6 (W.D. Va. Sept. 3, 2015); Campbell ex rel. Equity Unit Holders v. Am. Int'l Grp., Inc., 86 F. Supp. 3d 464, 472 n.9 (E.D. Va. 2015), aff'd, 616 F. App'x 74, 75 (4th Cir. 2015) (per curiam).

permit Plaintiffs to dismiss, i.e., to withdraw, their first motion to amend. Accordingly, Plaintiffs' MOTION TO LEAVE TO AMEND TO ALL DEFENDANTS/ DISMISS THE PRIOR MOTION TO LEAVE TO AMEND (ECF No. 48) will be granted to that limited extent and PLAINTIFFS' MOTION FOR LEAVE TO FILE AMENDED COMPLAINT (ECF No. 27) will be denied as moot, having been withdrawn. The following analysis pertains to the remainder of the second motion to amend the Second Amended Complaint.

B. Whether to Permit Amendment of the Second Amended Complaint

1. The Standards Governing Amendment of a Complaint Under Fed. R. Civ. P. 15(a)(2)

Plaintiffs have already amended a complaint pursuant to Fed. R. Civ. P. 15(a)(1). See ORDER (ECF No. 23). Accordingly, Fed. R. Civ. P. 15(a)(2) governs. See Fed. R. Civ. P. 15(a). The standards applicable to such an amendment are as follows:

> Federal Rule of Civil Procedure 15(a)(2) provides that a court "should freely give leave" to amend a complaint "when justice so requires." Despite this general rule liberally allowing amendments, we have held that a district court may deny leave to amend if the amendment "would be prejudicial to the opposing party, there has been bad faith on the part of the moving party, or the amendment would have been futile."

United States ex rel. Nathan v. Takeda Pharms. N. Am., Inc., 707 F.3d 451, 461 (4th Cir. 2013) (citations omitted).

The Supreme Court has further instructed that amendment may be denied after "repeated failure to cure deficiencies by amendments

previously allowed." Foman v. Davis, 371 U.S. 178, 182 (1962). The Fourth Circuit appears to consider this element to be part of the "prejudice" factor. See Abdul-Mumit v. Alexandria Hyundai, LLC, __ F.3d __, 2018 WL 3405474, at *6 (4th Cir. 2018) ("Prejudice to the opposing party 'will often be determined by the nature of the amendment and its timing.' . . . We look to the 'particular circumstances' presented, including previous opportunities to amend and the reason for the amendment." (citations omitted)).[2]

In that vein, the Fourth Circuit has permitted dismissal of complaints after plaintiffs have repeatedly failed to take advantage of opportunities to present a claim. For example, in United States ex rel. Nathan, the Fourth Circuit observed:

> Relator has amended his complaint three times. A decision granting him leave to amend yet again would have resulted in a fifth complaint filed in this case. We also observe that two years have elapsed between the filing of the original complaint and the district court's dismissal of the amended complaint currently before us in this appeal. The granting of leave to file another amended complaint, when Relator was on notice of the deficiencies before filing the most recent amended complaint, would undermine the substantial interest of finality in litigation and unduly subject Takeda to the

[2] There is also case law indicating that repeated pleading failures suggest futility and bad faith. See Martin v. Duffy, 858 F.3d 239, 247 (4th Cir. 2017) ("Such repeated, ineffective attempts at amendment suggest that further amendment of the complaint would be futile."); Wilkins v. Wells Fargo Bank, N.A., 320 F.R.D. 125, 127 (E.D. Va. 2017) ("Bad faith includes . . . seeking leave to amend after repeated "pleading failures." (citations omitted)).

> continued time and expense occasioned by Relator's pleading failures. In view of the multiple opportunities Relator has been afforded to correct his pleading deficiencies and the deference due to the district court's decision, we conclude that the district court did not abuse its discretion in denying him leave to file a fourth amended complaint.

United States ex rel. Nathan, 707 F.3d at 461.

Likewise, in Glaser v. Enzo Biochem, Inc., "Plaintiffs had an unprecedented thirteen months of unilateral pre-complaint discovery under Bankruptcy Rule 2004 and had already set forth four iterations of their complaint." Glaser v. Enzo Biochem, Inc., 464 F.3d 474, 480 (4th Cir. 2006). The Fourth Circuit, accordingly, held that "the district court did not abuse its discretion in ruling that the plaintiffs' many opportunities to present their claim warranted denial of the motion to amend." Id.

Additionally, in Abdul-Mumit, the Fourth Circuit noted:

> Reviewing the record here, we discern no abuse of discretion. The circumstances of the litigation below compel our conclusion that the nature and timing of the amendment would prejudice Hyundai. Throughout the litigation below, Hyundai repeatedly challenged the sufficiency of Appellants' complaints—specifically on the ground that the complaints failed to plead facts pertinent to individual plaintiffs and defendants. These pleading deficiencies were the subject of status reports, meetings, and eventually a motion to dismiss. . . .
>
> All of this time and energy, largely focused on the deficiency of the complaints, spanned the entirety of the 2016 calendar year.

> In June 2016—in the heat of this litigation concerning the sufficiency of the complaints—the district court twice granted Appellants leave to amend and explained "that the complaints may now be stale and in need of updating." . . .
>
> And still, even after status reports, opportunities to amend, dispositive motions, dismissal with prejudice, and a post-judgment motion for leave to amend, Appellants have not once provided the district court with a proposed amendment purporting to cure the deficiencies.
>
> Faced with such resolute adherence to deficient complaints, the district court's decision to dismiss with prejudice was well within its discretion under the facts of this case.

Abdul-Mumit, 2018 WL 3405474, at *6-7 (citations omitted).

2. Analysis

In the Court's view, allowing further amendment would be prejudicial. It therefore refuses to grant Plaintiffs leave to amend.

Plaintiffs filed their initial Complaint on April 4, 2017. Quickly thereafter, they moved to amend. The Court, by ORDER (ECF No. 6), advised Plaintiffs in no uncertain terms that their Complaint was severely flawed and ordered them to correct the deficiencies:

> [F]inding that the COMPLAINT (ECF No. 1) and the proposed amendments (ECF Nos. 2 and 5) are simply not understandable and that they offend Fed. R. Civ. P. 8(a) which requires that a claim for relief must contain . . . "a short statement of the claims showing that the pleader is entitled to relief;" . . . it is hereby ORDERED that, by June 19, 2017, the plaintiffs

> shall file an Amended Complaint that: . . . (2) complies with the short and plain statement requirements of Fed. R. Civ. P. 8(a).

ORDER (ECF No. 6). Additionally, the Court stated:

> Further, the plaintiffs are advised that their scatter shot approach to pleading by bringing complaints by all people with whom they have dealt in the City of Richmond in connection with the matters about which they apparently complain, the plaintiffs risk the imposition of sanctions for filing vexatious and frivolous lawsuits and they are therefore further advised that, in their Amended Complaint, they should name, as defendants, only the person or entity they [sic] actually violated their rights and, in that regard, the plaintiffs are advised that, if any named defendant is required to respond to any Amended Complaint, and if the Court later finds that that person should not have been named as a defendant, the plaintiffs run the risk of being assessed with the costs and attorney's fees incurred by any such defendant in connection with the defenses of any action found to be lacking in merit. The foregoing admonitions are given because a review of the COMPLAINT and the proposed amendments shows that . . . (2) the claims asserted to date (to the extent those claims can be understood) are dubious at best (and, in fact, appear to be fanciful and delusional which, if found to be the case, necessitates dismissal).

ORDER (ECF No. 6).[3]

In response, Plaintiffs filed an Amended Complaint. It was largely unintelligible and replete with legalistic gibberish. Indeed, by ORDER (ECF No. 9), the Court again admonished Plaintiffs

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[3] The omitted language relates to the Court's conclusion that the Complaint and proposed amendments failed to show jurisdiction. That language has been removed because jurisdiction is not at issue here.

that their claims were "dubious" and suggested that those claims were difficult for the Court to understand. Several Defendants then moved to dismiss the Amended Complaint and included detailed briefing in support of their motion. That motion to dismiss, however, was denied as moot because Plaintiffs filed their Second Amended Complaint on the day after Defendants filed their motion. See ORDER (ECF No. 23). The Court construed the filing of the Second Amended Complaint as an amendment as a matter of course pursuant to Fed. R. Civ. P. 15(a)(1) and hence permitted it without further analysis. See ORDER (ECF No. 23).[4]

The Second Amended Complaint, however, was even more deficient than the first two complaints in this case. It omitted the numerous, albeit largely indecipherable, descriptions of events as well as the many exhibits that appeared in previous iterations. It contained essentially no factual allegations to support the wrongs asserted

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[4] The filing of the Second Amended Complaint was hardly a "normal" use of Fed. R. Civ. P. 15(a)(1). That provision permits a party to "amend its pleading once as a matter of course" within certain time limits and is typically relied upon early in the proceedings and before other amendments have been allowed. See Fed. R. Civ. P. 15(a)(1). Here, however, Plaintiffs had previously moved to amend the Complaint at the outset of the case. The Court rejected the proposed amendments because of their severe deficiencies, and it therefore did not treat Plaintiffs as using up their "free shot" amendment under Fed. R. Civ. P. 15(a)(1). See ORDER (ECF No. 6); ORDER (ECF No. 23). Thus, as to the Second Amended Complaint, Plaintiffs were relying on Fed. R. Civ. P. 15(a)(1) to support a second opportunity to replead their claims, and they were doing so after having received clear notice of the pervasive flaws in their pleadings.

by Plaintiffs. Consequently, Defendants again moved to dismiss, and they proffered analytically thorough briefs in support.

Plaintiffs moved to amend to file a Third Amended Complaint on December 28, 2017. They attached a proposed Third Amended Complaint (and several exhibits) to their motion. On April 23, 2018 (after Defendants had responded to that motion), Plaintiffs moved to dismiss the previous motion to amend and to amend the Second Amended Complaint. The second motion to amend did not include a proposed Third Amended Complaint (or any exhibits).

In light of the foregoing, it is apparent that further amendment would be prejudicial. Plaintiffs have filed three complaints in this action and, therefore, have had three opportunities to produce a complaint that satisfies federal pleading requirements. They were placed on notice by the Court, after filing the first complaint in this action, that they had not satisfied these requirements. Indeed, they were ordered to produce a pleading that cured the first complaint's inadequacies. Yet, the Amended Complaint was unintelligible and the Second Amended Complaint was devoid of factual allegations (and, accordingly, was the worst complaint of the bunch). Plaintiffs have clearly demonstrated "resolute adherence to deficient complaints." See Abdul-Mumit, 2018 WL 3405474, at *7.

Furthermore, Defendants have expended considerable time and effort in responding (quite diligently) to Plaintiffs' many

pleadings. After Plaintiffs filed their largely indecipherable Amended Complaint, Defendants produced thoughtful and comprehensive briefing in support of their motion to dismiss. Defendants did the same after Plaintiffs filed their woefully insufficient Second Amended Complaint. To force Defendants to continue to respond to Plaintiffs' pleadings would impose an unacceptably onerous burden upon them.[5]

That conclusion is underscored, moreover, by the fact that the Court has little way of ascertaining whether allowing amendment would cure the inadequacies in Plaintiffs' pleadings. Although the first motion to amend included a proposed Third Amended Complaint and exhibits, these were omitted from the second motion to amend, which is now the operative motion. And, given Plaintiffs' track record, it is highly likely that the Third Amended Complaint would suffer from faults similar to those of its predecessors.[6]

Enough is enough. Allowing amendment would be highly prejudicial to Defendants. Denying leave to amend is appropriate and warranted. Cf. United States ex rel. Nathan, 707 F.3d at 461 ("The

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[5] It is worth noting that Defendants have also shouldered the burden of responding attentively to other of Plaintiffs' (at times improper) filings.

[6] That is true notwithstanding that, in the second motion to amend, Plaintiffs describe, in general terms, their proposed changes. Given the previous complaints in this case, the Court is not willing to rely on Plaintiffs' generalized characterizations.

granting of leave to file another amended complaint, when Relator was on notice of the deficiencies before filing the most recent amended complaint, would undermine the substantial interest of finality in litigation and unduly subject Takeda to the continued time and expense occasioned by Relator's pleading failures.").

The Court is mindful of Plaintiffs' pro se status. The law is complex, and pro se litigants often face an uphill battle, given that they must familiarize themselves quickly with concepts that their opponents have often had years, or decades, to master. Consequently, the Court treats pro se parties with a certain leniency. But, pro se parties are still persons seeking action by a Court of the United States and must satisfy the requirements of doing so. That is especially so where the failure to comply with those requirements would harm or prejudice a defendant. Here, Plaintiffs have steadfastly refused to discharge their obligations and have done so in a way that severely burdens Defendants. As Defendants aptly observe, "Plaintiffs continue to file pleading after pleading with no apparent understanding of what they are doing, what they are demanding of the various Defendants, or the imposition they continue to impose upon the Court and Defendants' resources and time." Defs.' Opp'n 2 (ECF No. 30). That is not acceptable, even for pro se parties.

Accordingly, Plaintiffs' MOTION TO LEAVE TO AMEND TO ALL DEFENDANTS/ DISMISS THE PRIOR MOTION TO LEAVE TO AMEND (ECF No. 48)

will be denied as to the request to amend the Second Amended Complaint.[7]

CONCLUSION

For the foregoing reasons, Defendants the City of Richmond, Selena Cuffee-Glenn, Timothy Burnett, William Davidson, and Randall Masters' MOTION TO DISMISS THE SECOND AMENDED COMPLAINT PURSUANT TO RULE 12(b)(6) (ECF No. 24) will be granted; Defendants Jeremy L. Nierman and Alice Snell's MOTION TO DISMISS THE SECOND AMENDED COMPLAINT PURSUANT TO RULE 12(b)(6) (ECF No. 36) will be granted; Defendant Aaron Grayson's MOTION TO DISMISS THE SECOND AMENDED COMPLAINT PURSUANT TO RULE 12(b)(6) (ECF No. 41) will be granted; PLAINTIFFS' MOTION FOR LEAVE TO FILE AMENDED COMPLAINT (ECF No. 27) will be denied as moot, having been withdrawn; and Plaintiffs' MOTION TO LEAVE TO AMEND TO ALL DEFENDANTS/ DISMISS THE PRIOR MOTION TO LEAVE TO AMEND (ECF No. 48) will be granted as to Plaintiffs' request to withdraw PLAINTIFFS' MOTION FOR LEAVE TO FILE AMENDED

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[7] Plaintiffs also seek to add a Defendant, Anthony Jones, in the Third Amended Complaint. Although Jones has not yet expended resources on responding to Plaintiffs' many deficient pleadings, the Court concludes that it would be improper to allow amendment even as to him, given Plaintiffs' "repeated failure to cure deficiencies by amendments previously allowed" and their failure to show that their proposed changes to the Second Amended Complaint would correct the deficiencies. See Foman, 371 U.S. at 182. Those failures, moreover, are suggestive of bad faith and futility, which also support denying leave to amend. See Martin, 858 F.3d at 247; Wilkins, 320 F.R.D. at 127.

COMPLAINT (ECF No. 27) and will otherwise be denied.

It is so ORDERED.

/s/ REP
Robert E. Payne
Senior United States District Judge

Richmond, Virginia
Date: August 10, 2018